

The Honorable Tana Lin

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BOARD OF TRUSTEES OF THE
EMPLOYEE PAINTERS' TRUST; BOARD
OF TRUSTEES OF THE WESTERN
WASHINGTON PAINTERS DEFINED
CONTRIBUTION PENSION TRUST;
BOARD OF TRUSTEES OF THE DISTRICT
COUNCIL NO. 5 APPRENTICESHIP AND
TRAINING TRUST FUND; BOARD OF
TRUSTEES OF THE INTERNATIONAL
PAINTERS AND ALLIED TRADES
INDUSTRY PENSION FUND; BOARD OF
TRUSTEES OF THE FINISHING TRADES
INSTITUTE; THE PAINTERS AND ALLIED
TRADES LABOR-MANAGEMENT
COOPERATION INITIATIVE; WESTERN
WASHINGTON SIGNATORY PAINTING
EMPLOYERS ASSOCIATION;
NORTHWEST WALL 7 CEILING
CONTRACTORS ASSOCIATION;
INTERNATIONAL UNION OF PAINTERS
AND ALLIED TRADES DISTRICT
COUNCIL NO. 5,

Plaintiffs,

v.

MARIN BROS., INC., an Illinois corporation;
ABEL MARIN, an individual; JENNIFER
GARCIA, an individual; DOES & ROES I-X,

Defendants.

Case No.: 2:23-cv-00483-TL

**SECOND STIPULATION AND ORDER
TO STAY PROCEEDINGS**

Noting Date: July 22, 2024

1 The Plaintiffs, Board of Trustees of The Employee Painters' Trust, *et al.* (collectively
2 the "Plaintiffs"), and Defendants Marin Bros., Inc., Abel Marin, and Jennifer Garcia
3 (collectively the "Defendants") (Plaintiffs and Defendants are collectively referred to herein as
4 the "Parties"), each acting by and through their undersigned counsel, respectfully file this
5 Stipulation to Stay Proceedings. This Stipulation is the Parties' second request to stay the
6 proceedings and is made for cause and not for the purpose of delay. This Stipulation is made
7 with respect to the following:

8 1. The Court issued an Order Setting Bench Trial Date and Related Dates on
9 October 27, 2023 [ECF No. 17]. The Court issued an Order granting the Parties' Stipulated
10 Motion to Extend Deadlines on February 5, 2024 [ECF No. 24]. The Court also issued an
11 Order to Stay Proceedings on May 7, 2024, staying the proceedings and all unexpired deadlines
12 to August 5, 2024 [ECF No. 28].

13 2. This case centers on alleged fringe benefit payment obligations arising from
14 Collective Bargaining Agreements ("CBA") between the International Union of Painters and
15 Allied Trades District Council No. 5 ("Union") and Defendant Marin Bros., Inc. ("Marin
16 Bros").

17 3. The Plaintiffs, as employee benefit trust funds governed by the Employee
18 Retirement Income Security Act ("ERISA"), have alleged the right to be paid certain fringe
19 benefit contributions and related damages for work performed by Marin Bros' employees
20 pursuant to the terms of the CBA.

21 4. The Plaintiffs alleged in the Complaint [ECF No. 1] the right to perform a
22 payroll compliance review (audit) of Marin Bros' payroll and related records to determine the
23 extent of contributions of contributions owed to the Plaintiffs. *See Cent. States, Se. & Sw.*
24 *Areas Pension Fund v. Cent. Transp., Inc.*, 472 U.S. 559, 573-74 (1985) (discussing the role
25 of a payroll auditor in determining unpaid contributions).

26 5. Since the filing of the Complaint and since the Court's Order to Stay

1 Proceedings, the parties continued to engage in diligent discovery, have worked together to
2 avoid any court intervention of discovery issues, and have cooperated with sharing documents
3 and information so that an audit of Marin Bros' records could be performed by a professional
4 accounting firm engaged by the Plaintiffs.

5 6. The Plaintiffs' auditor issued a report for the period March 1, 2022 through
6 December 31, 2022 ("First Audit Period"). Since the Court's Order to Stay Proceedings, the
7 Plaintiffs' auditor completed a draft audit for the period of January 1, 2023 through September
8 30, 2023 ("Second Audit Period").

9 7. Defendants engaged a separate professional accounting firm to conduct their
10 own review of Marin Bros' payroll records, had issued its preliminary report regarding the
11 First Audit Period, and reviewed the draft audit for the Second Audit Period. Defendants
12 believe that this case involved potential mistakes in payments for benefits either (1) not owed
13 to Plaintiffs or (2) covered in Plaintiffs' scope but accidentally paid to another entity. For
14 Defendants' separate professional accounting firm to adequately assess and respond to
15 Plaintiffs' draft audit of the Second Audit Period, Defendants require additional time to obtain
16 and gather additional documents regarding its payroll and payment of benefits and for
17 Defendants' separate professional accounting firm to review and prepare a report for the
18 Second Audit Period.

19 8. The parties expect that they will soon have competing audit reports that will
20 need to be reviewed and evaluated before discovery in this case can continue.

21 9. Additionally, the Parties intend to evaluate whether settlement discussions will
22 be fruitful and hope to engage in meaningful settlement negotiations once final audit results
23 are issued by each auditor. The Parties are committed to their ongoing obligation to explore
24 settlement options in this case.

25 10. The Parties agree that a ninety (90) day stay of proceedings is warranted due to
26 the need to complete the audits and to allow for discussion of the results of the audits and

1 potential settlement.

2 11. This Stipulation is made to avoid unnecessary expenditure of resources in
3 litigation and is not intended to delay or for any improper purpose.

4 12. Accordingly, the Parties by and through their undersigned counsel, stipulate
5 and agree, subject to the Court's approval, that these proceedings and all unexpired deadlines
6 set forth in the Court's February 5, 2024 Order [ECF No. 24] shall be stayed an additional
7 ninety (90) days from August 5, 2024.

8 13. No later than two weeks prior to the expiration of the stay, the Parties will meet
9 and confer and file a joint status report to update the Court on the status of the audits,
10 settlement, and, if not settled, a schedule for how the Parties intend to complete discovery.

11 DATED: July 22, 2024.

12 CHRISTENSEN JAMES & MARTIN

12 BUCHALTER

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20 ORDER

21 Good Cause Appearing, in accordance with the foregoing Stipulation, these proceedings
22 and all unexpired deadlines set forth in the Court's February 5, 2024 Order [ECF No. 24] shall be
23 stayed for an additional ninety (90) days from the date of entry of this Order. No later than two
24 weeks prior to the expiration of the stay, the Parties will meet and confer and file a joint status report
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1 to update the Court on the status of the audits, settlement, and, if not settled, a schedule for how the
2 Parties intend to complete discovery.

3 DATED this 23rd day of July, 2024.

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6 Tana Lin
7 United States District Judge

8 Presented by:

9 BUCHALTER

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